

8/8/2016 3:23:45 PM  
Chris Daniel - District Clerk Harris County  
Envelope No. 12050075  
By: MELISSA TORRES  
Filed: 8/8/2016 3:23:45 PM

CAUSE NO. 201643681

RECEIPT NO. 0.00 CIV  
\*\*\*\*\* TR # 73261722

PLAINTIFF: ELIZONDO, RUBEN  
vs.  
DEFENDANT: TRAVELERS INSURANCE AGENCY INC

In The 125th  
Judicial District Court  
of Harris County, Texas  
125TH DISTRICT COURT  
Houston, TX

CITATION

THE STATE OF TEXAS  
County of Harris

TO: TRAVELERS INSURANCE AGENCY INC BY SERVING ITS REGISTERED AGENT  
CT CORPORATION SYSTEM  
OR WHEREVER THEY MAY BE FOUND  
1999 BRYAN STREET SUITE 900 DALLAS TX 75201

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION JURY DEMAND AND REQUEST FOR DISCLOSURE

This instrument was filed on the 28th day of June, 2016, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 28th day of June, 2016, under my hand and seal of said Court.

Issued at request of:  
WEYCER, MARK A.  
4545 BISSONNET 294  
BELLAIRE, TX 77401  
Tel: (713) 668-4545  
Bar No.: 21237300



*Chris Daniel*

CHRIS DANIEL, District Clerk  
Harris County, Texas  
201 Caroline, Houston, Texas 77002  
(P.O. Box 4651, Houston, Texas 77210)

Generated By: CUERO, NELSON 7MM//10420891

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at \_\_\_\_\_ o'clock \_\_\_\_ M., on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Executed at (address) \_\_\_\_\_ in

\_\_\_\_\_ County at \_\_\_\_\_ o'clock \_\_\_\_ M., on the \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_, by delivering to \_\_\_\_\_ defendant, in person, a

true copy of this Citation together with the accompanying \_\_\_\_\_ copy(ies) of the Petition

attached thereto and I endorsed on said copy of the Citation the date of delivery.

To certify which I affix my hand officially this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

FEE: \$ \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_ County, Texas

\_\_\_\_\_  
Affiant

By \_\_\_\_\_  
Deputy

On this day, \_\_\_\_\_, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

N.INT.CITR.P

\*73261722\*

EXHIBIT

A

**CAUSE NO. 201643681**

ELIZONDO, RUBEN  
***Plaintiff***

vs.

TRAVELERS INSURANCE AGENCY INC.  
***Defendant***

§  
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§

IN THE 125<sup>th</sup> JUDICIAL DISTRICT

COURT OF HARRIS COUNTY, TEXAS

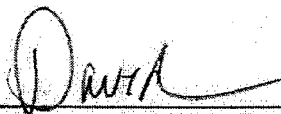
**AFFIDAVIT OF SERVICE**

My name is **DAVID DREILING**. I am over the age of eighteen (18), I am not a party to this case, and have no interest in its outcome. I am a private process server authorized by and through the Supreme Court of Texas, am in all ways competent to make this affidavit, and this affidavit is based on personal knowledge. The facts stated herein are true and correct. My business address is 309 S. Kealy Street, Lewisville, Texas 75057.

**On July 12, 2016 at 10:00 A.M. - CITATION, PLAINTIFF'S ORIGINAL PETITION JURY DEMAND AND REQUEST FOR DISCLOSURE for delivery to TRAVELERS INSURANCE AGENCY INC, BY DELIVERING TO ITS REGISTERED AGENT CT CORPORATION SYSTEM at 1999 BRYAN STREET, SUITE 900, DALLAS, TEXAS 75201, came to hand.**

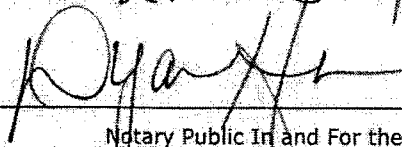
**On July 12, 2016 at 3:46 P.M. - THE ABOVE NAMED DOCUMENTS WERE DELIVERED TO: TRAVELERS INSURANCE AGENCY INC., BY DELIVERING TO ITS REGISTERED AGENT CT CORPORATION SYSTEM, accepted by Terri Thongsavat, Intake Specialist at 1999 BRYAN STREET, SUITE 900, DALLAS, DALLAS COUNTY, TEXAS 75201, by personal service.**

**FURTHER AFFIANT SAYETH NOT.**

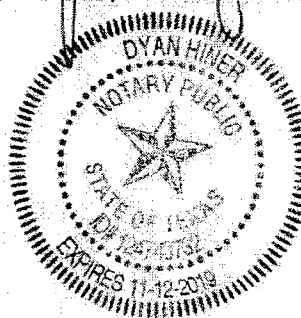


**DAVID DREILING, Affiant**  
**ID: SCH000010402 expires: 07/31/2016**

Before me personally appeared the above-named affiant, who, being first duly sworn, stated upon oath that the above-stated facts are true and correct and within his or her personal knowledge, and subscribed the same on this 29<sup>th</sup> day of July, 2016.



Notary Public In and For the State of Texas



Jul 14 2016 18:05:49 12127430617

-&gt;

Nor-3-15 MetLife

Page 004


**Service of Process  
Transmittal**

07/12/2016

CT Log Number 529492524

**TO:** Tracey Gilliam, Chief Counsel of Litigation  
Metropolitan Life Insurance Company  
1095 Avenue of the Americas  
New York, NY 10036-6796

**RE: Process Served in Texas**

**FOR:** The Travelers Insurance Company (Former Name) (Domestic State: CT)  
MetLife Insurance Company USA (True Name)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** RUBEN ELIZONDO, Pltf. vs. Travelers Insurance Agency Inc, Dft.  
*Name discrepancy noted.*

**DOCUMENT(S) SERVED:** Citation, Original Petition

**COURT/AGENCY:** 125th Judicial District Court Harris County, TX  
Case # 201643681

**NATURE OF ACTION:** Insurance Litigation

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Dallas, TX

**DATE AND HOUR OF SERVICE:** By Process Server on 07/12/2016 at 15:40

**JURISDICTION SERVED:** Texas

**APPEARANCE OR ANSWER DUE:** By 10:00 a.m. on the Monday next after the expiration of 20 days after you were served

**ATTORNEY(S) / SENDER(S):** Mark A. Weycer  
The Weycer Law Firm, P.C.  
4545 Bissonnet, Suite 294  
Bellaire, TX 77401  
713-668-4545

**ACTION ITEMS:** CT has retained the current log, Retain Date: 07/13/2016, Expected Purge Date: 07/18/2016  
  
Image SOP  
  
Email Notification, CTServiceof Process litigationintake@metlife.com

**SIGNED:** C T Corporation System

**ADDRESS:** 1999 Bryan St Ste 900  
Dallas, TX 75201-3140

**TELEPHONE:** 214-932-3601

Page 1 of 1 / DJ

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Jul 14 2016 10:06:25 12127438617

-&gt;

Nor-3-15 MetLife

Page 006

6/28/2016 4:06:39 PM  
 Chris Daniel - District Clerk Harris County  
 Envelope No. 11381245  
 By: Nelson Cuero  
 Filed: 6/28/2016 4:06:39 PM

CAUSE NO. \_\_\_\_\_

RUBEN ELIZONDO  
 Plaintiff,

vs.

TRAVELERS INSURANCE  
 AGENCY, INC.  
 Defendants.

§  
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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

\_\_\_\_ JUDICIAL DISTRICT

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PLAINTIFF'S ORIGINAL PETITION, JURY DEMAND &  
 REQUEST FOR DISCLOSURE

---

2016-43681 / Court: 125

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, Ruben Elizondo complaining of Defendant, Travelers Insurance Agency, Inc., hereinafter referred to as Travelers, for cause of action would show as follows:

**INTRODUCTION**

1. This is a civil action brought on behalf of Plaintiff. This action seeks monetary compensation for the personal injuries and damages caused by the negligence of Defendants Travelers.

**DISCOVERY CONTROL PLAN**

2 Pursuant to Rule 190 of the Texas Rules of Civil Procedure, Plaintiff states that discovery in this case is intended to be conducted under Level 2. The monetary damages of this case exceed \$200,000.00.

**REQUEST FOR DISCLOSURE**

3. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose within fifty (50) days of service of this request, the information or material described in Rule 194.2.

**PARTIES**

4. Plaintiff is an individual residing in Harris County, Texas.

5. Defendant, Travelers Insurance Agency, Inc., is an insurance company registered and doing business within the State of Texas at all times material herein. Defendant Travelers may be served with process herein by serving its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201 or wherever they may be found.

**JURISDICTION AND VENUE**

6. Venue is proper in Harris County pursuant to Tex. Civ. Prac. & Rem. Code §15.001 because all or a part of Plaintiff's causes of action occurred in Harris County, Texas.

**FACTS OF AUTO COLLISION**

7. On July 12, 2013, at the 900 block of El Dorado Blvd., Plaintiff was seriously injured in a motor vehicle collision involving Sunil Reddy Tetali.

8. The collision occurred when Plaintiff stopped for traffic and was rear ended by the Sunil Reddy Tetali.

9. As a direct and/or proximate result of the collision, Plaintiff was caused to suffer bodily injuries and to incur substantial damages.

**CAUSE OF ACTION FOR NEGLIGENCE**

10. Plaintiff incorporates herein all preceding paragraphs.

11. Sunil Reddy Tetali had a duty to exercise ordinary care and operate his vehicle as a reasonable and prudent person would have acted under the same or similar circumstances.

12. Sunil Reddy Tetali breached his duty in one or more respects including, but not limited to:

a) failing to maintain a proper lookout;

- b) failing to control the speed of his vehicle;
- c) driver inattention;
- d) failing to properly apply his brakes; and
- e) failing to maintain an assured clear distance from the vehicle in front.

13. The above acts and/or omissions were a proximate cause of the collision and plaintiff's resulting injuries and damages.

#### NEGLIGENCE PER SE OF SUNIL REDDY TETALI

14. In accordance with 545.062 of the Transportation Code, an operator shall, if following another vehicle, maintain an assured clear distance between the two vehicles so that, considering the speed of the vehicles, traffic, and the condition of the highway, the operator can safely stop without colliding with the preceding vehicle or veering into another vehicle, object, or person on or near the highway.

15. Negligence per se is a common-law doctrine in which a duty is imposed based on a standard of conduct created by a penal statute. The evidence will show:

- a. Plaintiff belongs to the class of persons the statute was designed to protect and his injury is of the type the statute was designed to prevent;
- b. The statute is one for which tort liability may be imposed when violated;
- c. Sunil Reddy Tetali violated the statute without excuse; and
- d. Sunil Reddy Tetali's act or omission proximately caused Plaintiff's injury.

16. The above acts and/or omissions were a proximate cause of the collision and plaintiff's resulting injuries and damages.

#### DAMAGES

17. As a direct and proximate result of the wrongful acts and/or omissions of the

Sunil Reddy Tetali, Plaintiff has suffered damages above the minimum jurisdictional requirements of this Court, including but not limited to the following:

- a. Physical pain in the past and future;
- b. Mental anguish in the past and future;
- c. Physical impairment in the past and future;
- d. Medical expenses in the past and future;
- e. Loss of earning capacity in the past and future;

18. Plaintiff's damages at the time of the filing of this petition are in excess of the minimum jurisdictional limits of this Court.

#### **FACTS OF UIM CLAIM**

19. The above referenced accident and resulting damages were caused by an underinsured driver. Plaintiff's injuries and damages will exceed Sunil Reddy Tetali's insurance policy. However, Plaintiff was driving a work vehicle for Nova Healthcare Management which was covered by an underinsured motorist policy POBA-3A593871 with Defendant Travelers. The policy provides coverage for Plaintiff in the event he sustains damages in a collision caused by a motorist who is underinsured.

20. Under the underinsured motorist policy with Defendant Travelers, Plaintiff is entitled to recover his damages, up to the policy limits, for injuries sustained from the auto collision with the at fault motorist. Defendant Travelers's refusal to pay Plaintiff's reasonable damages is a breach of the insurance policy with the company.

#### **BREACH OF CONTRACT**

21. The evidence in this case will establish that Defendant Travelers has a contractual obligation to pay Plaintiff for the damages he incurred in the collisions made the basis of this



suit. Despite receipt of evidence confirming Plaintiff's injuries and damages, Defendant Travelers has failed to comply with the contract between the parties and is therefore liable for breach of contract.

#### **DECLARATORY JUDGMENT**

22. Based on the foregoing facts, and pursuant to the policy of insurance in force and effect and covering Plaintiff and by Defendant Travelers at the time of the collision, Plaintiff seeks a declaratory judgment pursuant to Tex. Civ. Prac. & Rem. Code Ch. 37 that he is entitled to recover from Defendant Travelers his damages resulting from the motor vehicle collision which is the subject of this suit, that those damages fall within the coverage afforded him under the policy with Defendant Travelers, and specifying the amount of damages, attorneys' fees, interest, and court costs that Defendant TRAVELERS is obligated to pay.

#### **BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

23. The evidence in this case establishes that Defendant Travelers breached its duty to act in good faith and fairly deal with Plaintiff in that Defendant Travelers has no reasonable basis for refusing to pay under the Underinsured Motorist protection coverage. As a consequence, Defendant Travelers is liable for actual damages, punitive damages and other relief as pled for in this petition.

#### **LIABILITY UNDER TEXAS INSURANCE CODE**

24. Defendant Travelers's failure to attempt to effectuate a prompt, fair and equitable settlement with respect to which its liability has become reasonably clear and its failure to promptly pay the claim violates Texas Insurance Code §§ 541.060 and 542.051 et seq. Plaintiff has been trying to resolve this claim with Defendant Travelers's since July of 2015.



**DAMAGES**

25. Defendant Travelers's conduct is a proximate and producing cause of damages to Plaintiff. Such damages include, but are not limited to, unpaid benefits, medical expenses, and lost wages. Such damages have occurred in the past and are likely to continue in the future. Plaintiff is also entitled to statutory damages.

**ATTORNEYS' FEES**

26. As a result of Defendant Travelers's conduct, Plaintiff has incurred attorneys' fees through trial and appeal, if any.

**DEMAND FOR JURY TRIAL**

27. Plaintiff demands a trial by jury on all of his claims.

**PRAYER**

28. Plaintiff prays that Defendant Travelers be cited to appear and answer and that upon final hearing he recovers judgment against the Defendant Travelers for the following:

- a. All actual damages proximately resulting from Defendant's negligent acts and/or omissions;
- b. Costs of court;
- c. Prejudgment and post judgment interest at the maximum rate allowed by law; and
- d. All damages recoverable pursuant to all statutes cited herein, including, but not limited to treble damages;
- e. Reasonable attorneys' fees;
- f. Declaratory relief as outlined in the petition;
- g. For such other and further relief, both general and special, at law or in equity, to which Plaintiff may show himself justly entitled.

Jul 14 2016 10:08:00 12127430617

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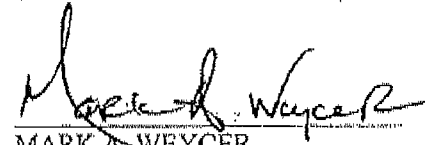
Nor-3-15 MetLife

Page 012

Respectfully submitted,

THE WEYCER LAW FIRM, P.C.

By:



MARK A. WEYCER

State Bar No. 21237300

ALYSSA SCHAFER

State Bar No. 24027813

4545 Bissonnet, Suite 294

Bellaire, Texas 77401

Tele: (713) 668-4545

Fax: (713) 668-5115

[mweycer@weycerlawfirm.com](mailto:mweycer@weycerlawfirm.com)

[aschaffer@weycerlawfirm.com](mailto:aschaffer@weycerlawfirm.com)

ATTORNEYS FOR PLAINTIFF

## CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_

COURT (FOR CLERK USE ONLY): \_\_\_\_\_

STYLED RUBEN ELIZONDO V. TRAVELERS INSURANCE AGENCY, INC.

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b> Name: Mark A. Weycer Address: 4545 Bissonnet, Suite 294 City/State/Zip: Houston, Texas 77401 Email: mweycer@weycerlawfirm.com Telephone: 713-668-4545 Fax: 713-668-5115 State Bar No: 21237300		<b>Names of parties in case:</b> Plaintiff(s)/Petitioner(s): Ruben Elizondo Defendant(s)/Respondent(s): Travelers Insurance Agency, Inc.		<b>Person or entity completing sheet is:</b> <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>		<b>Civil</b>			
<input type="checkbox"/> Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract:  <b>Foreclosure</b> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:		<input type="checkbox"/> Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input checked="" type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:		<input type="checkbox"/> Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property:  <input type="checkbox"/> Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	
<b>Employment</b> <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:		<b>Other Civil</b> <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:		<b>Family Law</b> <input type="checkbox"/> Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <b>Divorce</b> <input type="checkbox"/> With Children <input type="checkbox"/> No Children  <input type="checkbox"/> Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other  <input type="checkbox"/> Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order  <input type="checkbox"/> Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	
<b>Tax</b> <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		<b>Probate &amp; Mental Health</b> <input type="checkbox"/> Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:			
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
<b>4. Indicate damages sought (do not select if it is a family law case):</b>					

6/28/2016 4:06:39 PM  
 Chris Daniel - District Clerk  
 Harris County  
 Envelope No: 11381245  
 By: CUELO, NELSON  
 Filed: 6/28/2016 4:06:39 PM

- ☐ Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees
- ☐ Less than \$100,000 and non-monetary relief
- ☐ Over \$100,000 but not more than \$200,000
- ☒ Over \$200,000 but not more than \$1,000,000
- ☐ Over \$1,000,000

Rev 2/13

## CIVIL PROCESS REQUEST FORM

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING  
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: \_\_\_\_\_ CURRENT COURT: \_\_\_\_\_

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): Original Petition \_\_\_\_\_

FILE DATE OF MOTION: June 28, 2016

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: Travelers Insurance Agency., Inc.

ADDRESS: 1999 Bryan Street, Suite 900, Dallas, Texas 75201

AGENT, (if applicable): CT Corporation System

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation

SERVICE BY (check one):

☐ ATTORNEY PICK-UP

☐ CONSTABLE

☒ CIVIL PROCESS SERVER - Scopio Legal Process/Tim Soublet 832-660-4602

☐ MAIL

☐ CERTIFIED MAIL

☐ PUBLICATION:

Type of Publication:

☐ COURTHOUSE DOOR, or

☐ NEWSPAPER OF YOUR CHOICE: \_\_\_\_\_

☐ OTHER, explain \_\_\_\_\_

ATTENTION: Effective June 1, 2010

For all Services Provided by the DISTRICT CLERKS OFFICE requiring our office to MAIL something back to the Requesting Party, we require that the Requesting Party provide a Self-Addressed Stamped Envelope with sufficient postage for mail back. Thanks you,

\*\*\*\*\*

2. NAME:

ADDRESS:

AGENT, (if applicable):

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type):

SERVICE BY (check one):

☐ ATTORNEY PICK-UP

☐ CONSTABLE

☐ CIVIL PROCESS SERVER-

☐ CERTIFIED MAIL

☐ MAIL

☐ PUBLICATION:

Type of Publication:

☐ COURTHOUSE DOOR, or

☐ NEWSPAPER OF YOUR CHOICE: \_\_\_\_\_

☐ OTHER, explain \_\_\_\_\_

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: Mark A. Weycer

TEXAS BAR NO./ID NO. 21237300

MAILING ADDRESS: 4545 Bissonnet, Suite 294, Bellaire, Texas 77401

PHONE NUMBER: 713

668-4545

FAX NUMBER: 713

668-5115

area code

phone number

area code

fax number

EMAIL ADDRESS: mweycer@weycerlawfirm.com

6/28/2016 4:06:39 PM  
Chris Daniel - District Clerk  
Harris County  
Envelope No: 11381215  
By: CUERO, NELSON  
Filed: 6/28/2016 4:06:39 PM



**CHRIS DANIEL**  
HARRIS COUNTY DISTRICT CLERK

ENTERED \_\_\_\_\_  
VERIFIED WL

**Civil Process Pick-Up Form**

CAUSE NUMBER: 2016 43681

ATY \_\_\_\_\_

CIV ☒

COURT 125

**REQUESTING ATTORNEY/FIRM NOTIFICATION**

\*ATTORNEY REQUESTING: Mark A. Weycer ATTY. PHONE #: 713 668 4545

\*CIVIL PROCESS SERVER (CIV): Scopic Legal Process BOX: 174

\*CIV PHONE NUMBER: 832 660 4602

\*PERSON NOTIFIED SVC READY: Tim Saublet

\*NOTIFIED BY: Nelson Cuero

DATE: 6/28/16

Type of Service Document: CITR

Tracking Number 73261722

Process papers prepared by: Nelson Cuero

Date: Tuesday, June 28, 2016

30 days waiting 07 - 28 - 16

\*Process papers released to: T J Saublet  
(PRINT NAME)

\*CONTACT NUMBER: 650-4602 (SIGNATURE)

\*Process papers released by: Tris Collins  
(PRINT NAME)

(SIGNATURE)

\* Date: 7/8, 2016 Time: 8:45 AM / PM

RECORDER'S MEMORANDUM  
This instrument is of poor quality  
at the time of imaging

**CAUSE NO. 2016-43681**

<b>RUBEN ELIZONDO</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>TRAVELERS INSURANCE</b>	§	
<b>AGENCY, INC.</b>	§	
<b>Defendants.</b>	§	<b>125<sup>th</sup> JUDICIAL DISTRICT</b>

---

**PLAINTIFF'S FIRST AMENDED PETITION, JURY DEMAND &  
REQUEST FOR DISCLOSURE**

---

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, Ruben Elizondo complaining of Defendant, Travelers Insurance Agency, Inc., hereinafter referred to as Travelers, and Defendant The Charter Oak Fire Insurance Company, hereinafter referred to as Charter, for cause of action would show as follows:

**INTRODUCTION**

1. This is a civil action brought on behalf of Plaintiff. This action seeks monetary compensation for the personal injuries and damages caused by the negligence of Defendants Travelers and Charter.

**DISCOVERY CONTROL PLAN**

2 Pursuant to Rule 190 of the Texas Rules of Civil Procedure, Plaintiff states that discovery in this case is intended to be conducted under Level 2. The monetary damages of this case exceed \$200,000.00.

**REQUEST FOR DISCLOSURE**

3. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose within fifty (50) days of service of this request, the information or material described



in Rule 194.2.

### **PARTIES**

4. Plaintiff is an individual residing in Harris County, Texas.

5. Defendant, Travelers Insurance Agency, Inc., is an insurance company registered and doing business within the State of Texas at all times material herein. Defendant Travelers may be served with process herein by serving its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201 or wherever they may be found.

6. Defendant, The Charter Oak Fire Insurance Company, is an insurance company registered and doing business within the State of Texas at all times material herein. Defendant Charter's attorney, Bruce Gaible, has agreed to appear and answer on behalf of Defendant Charter without the need for formal service.

### **JURISDICTION AND VENUE**

7. Venue is proper in Harris County pursuant to Tex. Civ. Prac. & Rem. Code §15.001 because all or a part of Plaintiff's causes of action occurred in Harris County, Texas.

### **FACTS OF AUTO COLLISION**

8. On July 12, 2013, at the 900 block of El Dorado Blvd., Plaintiff was seriously injured in a motor vehicle collision involving Sunil Reddy Tetali.

9. The collision occurred when Plaintiff stopped for traffic and was rear ended by the Sunil Reddy Tetali.

10. As a direct and/or proximate result of the collision, Plaintiff was caused to suffer bodily injuries and to incur substantial damages.

### **CAUSE OF ACTION FOR NEGLIGENCE**

11. Plaintiff incorporates herein all preceding paragraphs.

12. Sunil Reddy Tetali had a duty to exercise ordinary care and operate his vehicle as a reasonable and prudent person would have acted under the same or similar circumstances.

13. Sunil Reddy Tetali breached his duty in one or more respects including, but not limited to:

- a) failing to maintain a proper lookout;
- b) failing to control the speed of his vehicle;
- c) driver inattention;
- d) failing to properly apply his brakes; and
- e) failing to maintain an assured clear distance from the vehicle in front.

14. The above acts and/or omissions were a proximate cause of the collision and plaintiff's resulting injuries and damages.

**NEGLIGENCE PER SE OF SUNIL REDDY TETALI**

15. In accordance with 545.062 of the Transportation Code, an operator shall, if following another vehicle, maintain an assured clear distance between the two vehicles so that, considering the speed of the vehicles, traffic, and the condition of the highway, the operator can safely stop without colliding with the preceding vehicle or veering into another vehicle, object, or person on or near the highway.

16. Negligence per se is a common-law doctrine in which a duty is imposed based on a standard of conduct created by a penal statute. The evidence will show:

- a. Plaintiff belongs to the class of persons the statute was designed to protect and his injury is of the type the statute was designed to prevent;
- b. The statute is one for which tort liability may be imposed when violated;
- c. Sunil Reddy Tetali violated the statute without excuse; and
- d. Sunil Reddy Tetali's act or omission proximately caused Plaintiff's injury.

17. The above acts and/or omissions were a proximate cause of the collision and plaintiff's resulting injuries and damages.

### **DAMAGES**

18. As a direct and proximate result of the wrongful acts and/or omissions of the Sunil Reddy Tetali, Plaintiff has suffered damages above the minimum jurisdictional requirements of this Court, including but not limited to the following:

- a. Physical pain in the past and future;
- b. Mental anguish in the past and future;
- c. Physical impairment in the past and future;
- d. Medical expenses in the past and future;
- e. Loss of earning capacity in the past and future;

19. Plaintiff's damages at the time of the filing of this petition are in excess of the minimum jurisdictional limits of this Court.

### **FACTS OF UIM CLAIM**

20. The above referenced accident and resulting damages were caused by an underinsured driver. Plaintiff's injuries and damages will exceed Sunil Reddy Tetali's insurance policy. However, Plaintiff was driving a work vehicle for Nova Healthcare Management which was covered by an underinsured motorist policy POBA-3A593871 with Defendant Travelers. The policy provides coverage for Plaintiff in the event he sustains damages in a collision caused by a motorist who is underinsured.

21. Under the underinsured motorist policy with Defendant Charter, Plaintiff is entitled to recover his damages, up to the policy limits, for injuries sustained from the auto collision with the at fault motorist. Defendant Charter's refusal to pay Plaintiff's reasonable damages is a breach

of the insurance policy with the company.

#### **BREACH OF CONTRACT**

22. The evidence in this case will establish that Defendant Charter has a contractual obligation to pay Plaintiff for the damages he incurred in the collisions made the basis of this suit. Despite receipt of evidence confirming Plaintiff's injuries and damages, Defendant Charter has failed to comply with the contract between the parties and is therefore liable for breach of contract.

#### **DECLARATORY JUDGMENT**

23. Based on the foregoing facts, and pursuant to the policy of insurance in force and effect and covering Plaintiff and by Defendant Charter at the time of the collision, Plaintiff seeks a declaratory judgment pursuant to Tex. Civ. Prac. & Rem. Code Ch. 37 that he is entitled to recover from Defendant Charter his damages resulting from the motor vehicle collision which is the subject of this suit, that those damages fall within the coverage afforded him under the policy with Defendant Charter, and specifying the amount of damages, attorneys' fees, interest, and court costs that Defendant Charter is obligated to pay.

#### **BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

24. The evidence in this case establishes that Defendant Charter breached its duty to act in good faith and fairly deal with Plaintiff in that Defendant Charter has no reasonable basis for refusing to pay under the Underinsured Motorist protection coverage. As a consequence, Defendant Charter is liable for actual damages, punitive damages and other relief as pled for in this petition.

#### **LIABILITY UNDER TEXAS INSURANCE CODE**

25. Defendant Charter's failure to attempt to effectuate a prompt, fair and equitable

settlement with respect to which its liability has become reasonably clear and its failure to promptly pay the claim violates Texas Insurance Code §§ 541.060 and 542.051 et seq. Plaintiff has been trying to resolve this claim with Defendant Charter's since July of 2015.

### **DAMAGES**

26. Defendant Charter's conduct is a proximate and producing cause of damages to Plaintiff. Such damages include, but are not limited to, unpaid benefits, medical expenses, and lost wages. Such damages have occurred in the past and are likely to continue in the future. Plaintiff is also entitled to statutory damages.

### **ATTORNEYS' FEES**

27. As a result of Defendant Charter's conduct, Plaintiff has incurred attorneys' fees through trial and appeal, if any.

### **DEMAND FOR JURY TRIAL**

28. Plaintiff demands a trial by jury on all of his claims.

### **PRAYER**

29. Plaintiff prays that Defendant Charter be cited to appear and answer and that upon final hearing he recovers judgment against the Defendant Travelers for the following:

- a. All actual damages proximately resulting from Defendant's negligent acts and/or omissions;
- b. Costs of court;
- c. Prejudgment and post judgment interest at the maximum rate allowed by law; and
- d. All damages recoverable pursuant to all statutes cited herein, including, but not limited to treble damages;

- e. Reasonable attorneys' fees;
- f. Declaratory relief as outlined in the petition;
- g. For such other and further relief, both general and special, at law or in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

THE WEYCER LAW FIRM, P.C.

By:



MARK A. WEYCER  
State Bar No. 21237300  
ALYSSA SCHAFFER  
State Bar No. 24027813  
4545 Bissonnet, Suite 294  
Bellaire, Texas 77401  
Tele: (713) 668-4545  
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[mweycer@weycerlawfirm.com](mailto:mweycer@weycerlawfirm.com)  
[aschaffer@weycerlawfirm.com](mailto:aschaffer@weycerlawfirm.com)

ATTORNEYS FOR PLAINTIFF

---

**CERTIFICATE OF SERVICE**

---

I certify that on July 22, 2016, I served a copy of the foregoing instrument on the party listed below via facsimile and/or email as noted:

Bruce Gaible  
1233 West Loop South, Suite 1000  
Houston, Texas 77027  
(713) 650-0027 Fax  
[Bruce.Gaible@leclariryan.com](mailto:Bruce.Gaible@leclariryan.com)



MARK A. WEYCER

**CAUSE NO. 2016-43681**

<b>RUBEN ELIZONDO</b>	<b>§</b>	<b>IN THE DISTRICT COURT OF</b>
	<b>§</b>	
<b>v.</b>	<b>§</b>	<b>HARRIS COUNTY, TEXAS</b>
	<b>§</b>	
<b>TRAVELERS INSURANCE AGENCY,</b>	<b>§</b>	
<b>INC.</b>	<b>§</b>	<b>125<sup>th</sup> JUDICIAL DISTRICT</b>

**DEFENDANT THE CHARTER OAK FIRE INSURANCE COMPANY'S  
ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant **THE CHARTER OAK FIRE INSURANCE COMPANY** and for its Answer to Plaintiff's First Amended Petition on file herein, would respectfully show unto the Court as follows:

**I.**

Pursuant to Rule 92 of the TEXAS RULES OF CIVIL PROCEDURE, Defendant generally denies each and every, all and singular, the allegations in Plaintiff's First Amended Petition.

**II.**

Defendant demands and requests a trial by jury. A jury fee has been paid.

**III.**

Defendant reserves the right to amend this pleading as it is its right pursuant to the laws of the State of Texas.



WHEREFORE, PREMISES CONSIDERED, Defendant **THE CHARTER OAK FIRE INSURANCE COMPANY** having fully answered herein, pray that the Court enter a take-nothing judgment in its favor, and for such other and further relief, both special and general, to which it may be justly entitled.

Respectfully submitted,

**LECLAIRRYAN**

*/s/ Bruce C. Gaible*

By: \_\_\_\_\_

Bruce C. Gaible  
State Bar No. 07567400  
1233 West Loop South, Suite 1000  
Houston, Texas 77027  
Telephone: (713) 654-1111  
Facsimile: (713) 650-0027  
Email: bruce.gaible@leclairryan.com

**ATTORNEY FOR DEFENDANT,  
THE CHARTER OAK FIRE INSURANCE  
COMPANY**

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that a true and correct copy of the above and foregoing document has been served on all counsel of record on this the 22nd of July, 2016.

Mark A. Weycer  
Alyssa Schaffer  
The Weycer Law Firm, P.C.  
4545 Bissonnet, Suite 294  
Bellaire, Texas 77401

*Via E-Serve*

*/s/ Bruce C. Gaible*

---

BRUCE C. GAIBLE

## CAUSE NO. 2016-43681

RUBEN ELIZONDO	§	IN THE DISTRICT COURT OF
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
TRAVELERS INSURANCE AGENCY,	§	
INC.	§	125 <sup>th</sup> JUDICIAL DISTRICT

**DEFENDANT THE CHARTER OAK FIRE INSURANCE COMPANY'S  
RULE 216 REQUEST FOR JURY TRIAL**

TO THE HONORABLE JUDGE OF THE COURT:

In accordance with the provisions of Rule 216 of the Texas Rules of Civil Procedure, Defendant, **THE CHARTER OAK FIRE INSURANCE COMPANY**, requests that when this case proceeds to trial, it be placed on the Court's jury trial docket.

The appropriate jury fee is tendered herewith.

Respectfully submitted,

LECLAIRRYAN

*/s/ Bruce C. Gaible*

By: \_\_\_\_\_  
Bruce C. Gaible  
State Bar No. 07567400  
1233 West Loop South, Suite 1000  
Houston, Texas 77027  
Telephone: (713) 654-1111  
Facsimile: (713) 650-0027  
Email: bruce.gaible@leclairryan.com

**ATTORNEY FOR DEFENDANT,  
THE CHARTER OAK FIRE INSURANCE  
COMPANY**

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that a true and correct copy of the above and foregoing document has been served on all counsel of record on this the 22nd day of July, 2016.

Mark A. Weycer  
Alyssa Schaffer  
The Weycer Law Firm, P.C.  
4545 Bissonnet, Suite 294  
Bellaire, Texas 77401

*Via E-Serve*

*/s/ Bruce C. Gaible*

---

BRUCE C. GAIBLE

7/22/2016 2:26:26 PM  
Chris Daniel - District Clerk Harris County  
Envelope No. 11781944  
By: MELISSA TORRES  
Filed: 7/22/2016 2:26:26 PM

**CAUSE NO. 2016-43681**

<b>RUBEN ELIZONDO</b>	<b>§</b>	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff,</b>	<b>§</b>	
	<b>§</b>	
<b>Vs.</b>	<b>§</b>	<b>HARRIS COUNTY, TEXAS</b>
	<b>§</b>	
<b>TRAVELERS INSURANCE</b>	<b>§</b>	
<b>AGENCY, INC. and THE CHARTER</b>	<b>§</b>	
<b>OAK FIRE INSURNACE COMPANY</b>	<b>§</b>	
<b>Defendants.</b>	<b>§</b>	<b>125<sup>th</sup> JUDICIAL DISTRICT</b>

---

**PLAINTIFF'S MOTION FOR NON-SUIT WITHOUT PREJUDICE AS TO  
TRAVELERS INSURANCE AGENCY, INC.**

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**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, Plaintiff, Ruben Elizondo, and files this, his Motion for Non-Suit without Prejudice as to Defendant, Travelers Insurance Agency, Inc. As grounds therefore, Plaintiff, Ruben Elizondo would respectfully show as follows:

**I.**

Plaintiff, Ruben Elizondo has not assigned any of his rights in this matter to any third-party for further prosecution. Plaintiff no longer desires to prosecute this cause of action as to Defendant, Travelers Insurance Agency, Inc. and requests leave of Court to take a non-suit without prejudice against Defendant, Travelers Insurance Agency, Inc. Plaintiff's claim as to Defendant The Charter Oak Fire Insurance Company will remain ongoing.

Respectfully submitted,

THE WEYCER LAW FIRM, P.C.

By:

  
\_\_\_\_\_  
MARK A. WEYCER  
State Bar No. 21237300  
ALYSSA SCHAFFER  
State Bar No. 24027813  
4545 Bissonnet, Suite 294  
Bellaire, Texas 77401  
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[mweycer@weycerlawfirm.com](mailto:mweycer@weycerlawfirm.com)  
[aschaffer@weycerlawfirm.com](mailto:aschaffer@weycerlawfirm.com)

ATTORNEYS FOR PLAINTIFF

---

**CERTIFICATE OF SERVICE**

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I certify that on July 22, 2016, I served a copy of the foregoing instrument on the party listed below via facsimile and/or email as noted:

Bruce Gaible  
1233 West Loop South, Suite 1000  
Houston, Texas 77027  
(713) 650-0027 Fax  
[Bruce.Gaible@leclariryan.com](mailto:Bruce.Gaible@leclariryan.com)

  
\_\_\_\_\_  
MARK A. WEYCER

CAUSE NO. 2016-43681

<b>RUBEN ELIZONDO</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>TRAVELERS INSURANCE</b>	§	
<b>AGENCY, INC. and THE CHARTER</b>	§	
<b>OAK FIRE INSURNACE COMPANY</b>	§	
<b>Defendants.</b>	§	<b>125<sup>th</sup> JUDICIAL DISTRICT</b>

---

**ORDER GRANTING NON-SUIT WITHOUT PREJUDICE**

---

On this day the court considered Plaintiff, Ruben Elizondo's Motion for Non-Suit without Prejudice as to Defendant, Travelers Insurance Agency, Inc. and finds that Plaintiff, Ruben Elizondo, no longer wishes to prosecute this suit against Defendant, Travelers Insurance Agency, Inc.

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that the Motion for Non-Suit without Prejudice filed by Plaintiff, Ruben Elizondo, is in all things GRANTED.

The case asserted by Plaintiff, Ruben Elizondo, against Defendant, Travelers Insurance Agency, Inc. is DISMISSED without prejudice and the case as to Defendant The Charter Oak Fire Insurance Company will remain ongoing.

Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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JUDGE PRESIDING

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Chris Daniel - District Clerk  
Harris County  
Envelope No: 11781944  
BY: TORRES, MELISSA D  
Filed: 7/22/2016 2:26:26 PM



CAUSE NO. 2016-43681

RUBEN ELIZONDO	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
TRAVELERS INSURANCE	§	
AGENCY, INC. and THE CHARTER	§	
OAK FIRE INSURNACE COMPANY	§	
Defendants.	§	125 <sup>th</sup> JUDICIAL DISTRICT

---

**ORDER GRANTING NON-SUIT WITHOUT PREJUDICE**

---

On this day the court considered Plaintiff, Ruben Elizondo's Motion for Non-Suit without Prejudice as to Defendant, Travelers Insurance Agency, Inc. and finds that Plaintiff, Ruben Elizondo, no longer wishes to prosecute this suit against Defendant, Travelers Insurance Agency, Inc.

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that the Motion for Non-Suit without Prejudice filed by Plaintiff, Ruben Elizondo, is in all things GRANTED.

The case asserted by Plaintiff, Ruben Elizondo, against Defendant, Travelers Insurance Agency, Inc. is DISMISSED without prejudice and the case as to Defendant The Charter Oak Fire Insurance Company will remain ongoing.

Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Signed:  
7/25/2016




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JUDGE PRESIDING

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Chris Daniel - District Clerk  
Harris County  
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